

ORIGINAL

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-491V

May 31, 2012

Not for Publication



CHANDRA HILAND, parent of
LILLYEN HILAND, deceased,

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Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

Motion to dismiss; failure
to provide expert evidence
in support of allegation that
vaccinations led to baby death

Chandra Hiland, Kalispell, MT, for petitioner (pro se).
Justine E. Daigneault, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

On July 29, 2010, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10-34, alleging that vaccinations caused her daughter Lillyen's death six days later.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

Petitioner was initially represented by counsel who moved to withdraw on October 7, 2011. The undersigned granted the motion to withdraw on October 28, 2011. After this time, petitioner was pro se. The first telephonic status conference set for January 11, 2012 with consent of the parties was not held because petitioner did not appear.

The undersigned set another telephonic status conference, this time for January 23, 2012, in which petitioner appeared and said she was seeking another attorney.

On March 8, 2012, the undersigned held another telephonic status conference during which petitioner stated she was waiting to hear back from another attorney Curtis Webb.

On April 12, 2012, the undersigned held another telephonic status conference during which petitioner stated that Mr. Webb was not going to represent her and she had contacted another attorney David Terzian to see if he would. Mr. Terzian was consulting with a neuropathologist in California about the case based on slides on a CD-ROM that she had sent to him.

On May 10, 2012, the undersigned held another telephonic status conference during which petitioner said that Mr. Terzian still did not tell her if he would represent her.

On May 29, 2012, the undersigned's law clerk received a telephone message from Mr. Terzian stating that he had sent a letter on May 10, 2012, certified mail, return receipt requested, to petitioner stating that he and his firm would not represent her. He received a card that petitioner signed in receipt of the letter which confirmed that she received it on May 17, 2012.

On May 31, 2012, the undersigned held another telephonic status conference and asked petitioner what she would like to do now that Mr. Terzian had declined to represent her. Petitioner said there was nothing she could do. She requested dismissal of her case because she did not have an expert to support her allegations.

FACTS

Lillyen was born on March 8, 2008.

On July 30, 2008, she received DTaP, IPV, HiB, Prevnar, and Rotavirus vaccines. Med. recs. Ex. 5, at 1.

On August 5, 2008, Lillyen unfortunately died. Med. recs. Ex. 2 at 10. The Kalispell Regional Medical Center Emergency Department noted Lillyen died from SIDS (sudden infant death syndrome). She did not have any preceding fevers, cough, dyspnea, or illness. Med. recs. Ex. 18, at 3.

On August 5, 2008, a postmortem examination concluded that Lillyen died from SIDS. Med. recs. Ex. 6, at 1.

On August 6, 2008, Patrolman Michael W. Brooks wrote a Kalispell Police Department Report, stating that petitioner told him that Lillyen received her immunizations on July 30, 2008 from Dr. Mark Sorenson and was acting normally and not appearing to be in any distress at any time. She had contacted Dr. Sorenson and told him Lillyen had been fussy lately. Med. recs. Ex. 7, at 4, 5, and 9.

On August 6, 2008, Detective Sergeant Warnell wrote a supplemental report for the Kalispell Police Department, stating that Dr. Mark Harding said Lillyen was cool to the touch and it appeared she had been dead for about two hours prior to arriving at the emergency room. Lillyen's last feeding was apple juice at 8:00 p.m. She was laid on her back but she rolled over onto her stomach. Lillyen usually slept on her stomach and was sleeping fine at 10:00 p.m. Petitioner said that Lillyen had received her vaccinations on July 30, 2008 from Dr. Sorenson and was acting normally and not appearing to be in any distress at any time. Med. recs. Ex. 17, at 79.

On August 8, 2008, the Flathead County Sheriff Office Coroner Report stated that Lillyen's grandmother found her unresponsive at 6:45 a.m. Detective Sergeant Warnell spoke to Dr. Harding who advised that Lillyen's death appeared to be a classic SIDS death. The family pediatrician Dr. Sorenson did not note any apparent medical problems with Lillyen during her last visit a week before. Petitioner advised him that Lillyen had been fussy lately. Dr. Sorenson told her fussiness was common for a child that age. Med. recs. Ex. 17, at 42.

On August 26, 2008, the Flathead County Sheriff Office Coroner Report stated that, on August 15, 2008, the coroner spoke to Dr. Willie Kemp from the state crime laboratory, who advised that test results on Lillyen did not indicate anything other than what he originally thought, which was SIDS was the cause of death. The case was closed. Med. recs. Ex. 17, at 46.

On August 27, 2008, Dr. Harding at Kalispell Regional Medical Center filled out the death certificate, stating Lillyen's cause of death was SIDS. Med. recs. Ex. 17, at 47.

DISCUSSION

To satisfy her burden of proving causation in fact, petitioner must prove by preponderant evidence: "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." Althen v. Sec'y of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec'y of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by “proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[,]” the logical sequence being supported by “reputable medical or scientific explanation[,]” *i.e.*, “evidence in the form of scientific studies or expert medical testimony[.]”

Without more, “evidence showing an absence of other causes does not meet petitioners’ affirmative duty to show actual or legal causation.” Grant, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. Id. at 1148.

Petitioner must show not only that but for the vaccines, Lillyen would not have died, but also that the vaccines were substantial factors in bringing about her death. Shyface v. Sec’y of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

Since petitioner filed her petition, she has not provided evidence to make a prima facie case. She has not produced medical records or medical expert opinion to substantiate that the vaccines Lillyen received caused her death. The Vaccine Act does not permit the undersigned to rule in favor of petitioner based only on her allegations unsupported by medical records or medical opinion. 42 U.S.C. § 300aa-13(a)(1).

This is a tragic case. The undersigned extends her sympathy to petitioner.

Petitioner’s motion to dismiss is GRANTED.

CONCLUSION

This petition is DISMISSED. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

May 31, 2012
DATE

Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party’s filing a notice renouncing the right to seek review.